Arunakiri Nathar a/l Krisnan v Marubeni-Itochu Steel (M) Sdn Bhd & Ors

COURT OF APPEAL (PUTRAJAYA) — APPEAL NO B-02(IM)(NCvC)-893–06 OF 2023
NANTHA BALAN, LIM CHONG FONG AND NOORIN BADARUDDIN JJCA
19 MAY 2025

Civil Procedure — Striking out — Statement of claim ('SOC') — Defendants applied under O 18 r 19(1)(a) of Rules of Court 2012 to strike out SOC on ground it did not disclose a reasonable cause of action — High Court allowed application after considering matters outside the SOC — Whether court should not have considered whether plaintiff's claim was barred by s 31 of Employees' Social Security Act 1969 and/or s 6(1) of Limitation Act 1953 as these matters were not pleaded in SOC — Whether SOC taken by itself showed that plaintiff had a reasonable cause of action against defendants

Claiming that the respondents were his employers, the appellant sued them for damages for breaching their duty to provide him with a safe work environment. The appellant claimed that he was exposed to toxic substances whilst at work, causing him to fall seriously ill and be boarded out. In their defence, the respondents pleaded, inter alia, that the appellant's claim was time-barred under s 6(1) of the Limitation Act 1953 ('the LA') and that the appellant was an 'insured person' under the Employees' Social Security Act 1969 ('SOCSO Act') and had been receiving invalidity pension thereunder. The statement of defence did not specifically plead s 31 of the SOCSO Act which barred employees or ex-employees who were 'insured persons' under the SOCSO Act and who had sustained an employment injury, from suing their employer for compensation or damages. The respondents applied to strike out the appellant's statement of claim ('SOC') under O 18 r 19(1)(a) of the Rules of Court 2012 ('the ROC') on the ground that it did not disclose a reasonable cause of action. The High Court allowed the application holding that both s 31 of the SOCSO Act (mentioned in the striking out application) as well as the limitation issue precluded the appellant from filing the claim. In the instant appeal against the decision, the appellant argued that since the striking out application was made pursuant to para (1)(a) of O 18 r 19 of the ROC, the court could only consider what was pleaded in the SOC to determine if it disclosed a reasonable cause of action and could not consider extraneous matters, such as what had been pleaded in the statement of defence. The respondents, however, argued that the court was entitled to consider both s 31 of the SOCSO Act and the limitation issue as a matter of law in deciding whether the appellant's claim was maintainable.

Held, unanimously allowing the appeal, setting aside the High Court's decision and dismissing the striking out application:

(1) Counsel for the respondents had rightly admitted that the court could not look beyond the statement of claim ('SOC') in a striking out application under para (1)(a) of O 18 r 19 of the ROC. Hence, matters raised in the defence — such as the limitation issue — should not have been taken into account in deciding whether the SOC disclosed a reasonable cause of action. Similarly, s 31 of the SOCSO Act, which was only referred to in the striking out application, should not have been considered (see paras 19 & 21).

(2) The SOC did not make any mention of either the limitation issue or s 31 of the SOCSO Act. If the High Court had confined itself only to the contents of the SOC, it would have been obvious that it disclosed a reasonable cause of action (see para 24).

(3) The court could not agree with the respondents' argument that s 31 of the SOCSO Act need not be pleaded. On the contrary, s 31 must be pleaded. The respondents should have amended their statement of defence to plead s 31 and then applied to strike out the SOC under O 18 r 19(1)(b), (c) or (d) of the ROC (see paras 22 & 25).

[Bahasa Malaysia summary

Mendakwa bahawa responden merupakan majikannya, perayu telah menyaman mereka untuk ganti rugi atas pelanggaran kewajipan untuk menyediakan persekitaran kerja yang selamat. Perayu mendakwa bahawa beliau telah terdedah kepada bahan-bahan toksik semasa bekerja, yang menyebabkan beliau jatuh sakit dengan serius dan akhirnya ditamatkan perkhidmatan. Dalam pembelaan mereka, responden memplidkan, antara lain, bahawa tuntutan perayu telah dihalang oleh had masa menurut s 6(1) Akta Had Masa 1953 ('AHM') dan bahawa perayu merupakan 'orang berinsurans' di bawah Akta Keselamatan Sosial Pekerja 1969 ('Akta PERKESO') serta telah menerima pencen ilat di bawahnya. Pernyataan pembelaan tersebut tidak secara khusus memplidkan s 31 Akta PERKESO yang melarang pekerja atau bekas pekerja yang merupakan 'orang berinsurans' di bawah Akta PERKESO dan yang telah mengalami kecederaan pekerjaan daripada menyaman majikan mereka bagi tujuan pampasan atau ganti rugi. Responden telah memfailkan permohonan untuk membatalkan pernyataan tuntutan perayu di bawah A 18 k 19(1)(a) Kaedah-Kaedah Mahkamah 2012 ('KKM') atas alasan bahawa ia tidak mendedahkan suatu kausa tindakan yang munasabah. Mahkamah Tinggi telah membenarkan permohonan tersebut dengan memutuskan bahawa kedua-dua s 31 Akta PERKESO (yang disebut dalam permohonan pembatalan) serta isu had masa menghalang perayu daripada memfailkan tuntutan tersebut. Dalam rayuan semasa terhadap keputusan tersebut, perayu berhujah bahawa memandangkan permohonan

pembatalan dibuat menurut perenggan (1)(a) A 18 k 19 KKM, mahkamah hanya boleh mempertimbangkan apa yang dinyatakan dalam SOC bagi menentukan sama ada ia mendedahkan suatu kausa tindakan yang munasabah, iaitu apa yang telah diplidkan dalam pernyataan pembelaan. Responden pula berhujah bahawa mahkamah berhak untuk mengambil kira kedua-dua s 31 Akta PERKESO dan isu had masa sebagai isu undang-undang dalam menentukan sama ada tuntutan perayu boleh dipertahankan.

Diputuskan, sebulat suara membenarkan rayuan, mengetepikan keputusan Mahkamah Tinggi dan menolak permohonan pembatalan:

(1) Peguam bagi pihak responden secara wajar telah memplidkan bahawa mahkamah tidak boleh melihat perkara di luar kandungan pernyataan tuntutan ('PT') dalam sesuatu permohonan pembatalan di bawah perenggan (1)(a) A 18 k 19 KKM. Oleh itu, perkara yang dibangkitkan dalam pembelaan — seperti isu had masa — tidak sepatutnya diambil kira dalam menentukan sama ada PT mendedahkan suatu kausa tindakan yang munasabah. Begitu juga, s 31 Akta PERKESO, yang hanya dirujuk dalam permohonan pembatalan, tidak seharusnya dipertimbangkan (lihat perenggan 19 & 21).

(2) Penyataan tuntutan tidak menyatakan sama sekali tentang isu had masa mahupun s 31 Akta PERKESO. Sekiranya Mahkamah Tinggi mengehadkan pertimbangannya hanya kepada kandungan PT, ia jelas bahawa PT tersebut mendedahkan suatu kausa tindakan yang munasabah (lihat perenggan 24).

(3) Mahkamah tidak bersetuju dengan hujahan responden bahawa s 31 Akta PERKESO tidak perlu diplidkan. Sebaliknya, s 31 harus diplidkan. Responden sepatutnya meminda pernyataan pembelaan mereka untuk memplidkan s 31 dan kemudiannya memfailkan permohonan membatalkan PT di bawah A 18 k 19(1)(b), (c) atau (d) KKM (lihat perenggan 22 & 25).]

Cases referred to

Che Noh bin Yacob v Seng Hin Rubber (M) Sdn Bhd [1982] 1 MLJ 80, FC (refd)
Drummond-Jackson v British Medical Association [1970] 1 All ER 1094; [1970] 1 WLR 688; 114 Sol Jo 152, CA (folld)
Hubbuck & Sons Ltd v Wilkinson, Heywood and Clark Ltd [1899] 1 QB 86; [1895–99] All ER Rep 244, CA (refd)
Nagle v Feilden [1966] 1 All ER 689; [1966] 2 QB 633, CA (refd)
New Straits Times (Malaysia) Bhd v Kumpulan Kertas Niaga Sdn Bhd & Anor [1985] 1 MLJ 226, FC (refd)
Rajendiran a/l Manickam & Anor v Palmamide Sdn Bhd & Anor [2020] MLJU 2565; [2020] 9 CLJ 510, CA (refd)
Ramli bin Samad v Pacific & Orient Insurance Co Sdn Bhd [2010] 3 MLJ

23; [2010] 1 CLJ 970, CA (refd)
Rexallent Construction Sdn Bhd v MSIG Insurance (Malaysia) Bhd and other cases [2022] MLJU 1736; [2022] CLJU 1736; [2022] 1 LNS 1736, HC (folld)
Tan Peng Loh v Lee Aik Fong & Anor [1982] 1 MLJ 74, FC (refd)

Legislation referred to

Employees' Social Security Act 1969 s 31
Limitation Act 1953 s 6(1)
Rules of Court 2012 O 18 rr 12(1A), 19(1)(a), (1)(b), (1)(c), (1)(d), (2)

M Manoharan (with Nur Syamimi Adriana bt Shahrim) (M Manoharan & Co) for the appellant.
Vijayan Venugopal (with Adam Thye Yong Wei) (Shearn Delamore & Co) for the respondents.

Nantha Balan JCA:

INTRODUCTION

[1] This is an appeal against the High Court's decision dated 15 May 2023 in allowing the defendants' striking out application per encl 9 pursuant to O 18 r 19(1)(a) of the Rules of Court 2012 and/or under the inherent jurisdiction of the court. However, the application was only taken up as a striking out under O 18 r 19(1)(a) pursuant to which the court may strike out any writ or pleading on the ground that 'it discloses no reasonable cause of action or defence, as the case may be'. And pursuant to O 18 r 2, 'no evidence shall be and permissible on an application under paragraph 1(a)'. Thus, the striking out under the inherent jurisdiction was not pursued and shall not therefore be commented upon in this judgment.

[2] At first glance, the appeal purports to raise questions as to whether, by reason of s 31 of the Employees' Social Security Act 1969 ('the SOCSO Act'), an employee (or ex-employee) who sustained an employment injury or contracted a disease or medical condition due to his working environment, is precluded or statutorily barred from suing his employer for special damages, general damages, exemplary damages and aggravated damages. Section 31 of the SOCSO Act reads as follows:

> An insured person or his dependants shall not be entitled to receive or recover from the employer of the insured person, or from any other person who is the servant of the employer, any compensation or damages under any other law for the time being in force in respect of an employment injury sustained as an employee under this Act:
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> Provided that the prohibition in this section shall not apply to any claim arising from motor vehicle accidents where the employer or the servant of the employer is

required to be insured against Third Party Risks under Part IV of the Road Transport Act 1987 [Act 333]. A

[3] However, when the matter came up for hearing before us, it became crystal clear to us that the appeal in fact turned solely on a procedural issue, rather than the substantive law (s 31 of the SOCSO Act). The procedural issue being whether, in an application to strike out the writ and statement of claim under O 18 r 19(1)(a) of the Rules of Court 2012 where parties are confined only to the statement of claim, it is permissible for the court to rely on a statutory provision (eg s 31 of the SOCSO Act) to determine whether the statement of claim disclosed a reasonable cause of action, or alternatively, whether the claim had no chance of success. The other related issue is also whether the court could strike out the writ and statement of claim as being time-barred under s 6(1) of the Limitation Act 1953, when that issue was only raised in the defence. We now allude briefly to the background facts. B C D

THE CLAIM

[4] The appellant is Mr Arunakiri Nathar a/l Krisnan ('plaintiff'). The defendants are: (a) Marubeni-Itochu Steel (M) Sdn Bhd ('first defendant') ('D1'); (b) Anshin Precision Industries Sdn Bhd ('second defendant') ('D2'); and (c) SA Networks Technical Industries Sdn Bhd ('third defendant') ('D3'). For convenience, we shall refer to the appellant as 'plaintiff' and the respondents collectively as 'defendants', and individually as 'D1', 'D2', and 'D3' respectively. E F

[5] The plaintiff's case per the statement of claim dated 6 September 2022 is that he was an employee of the defendants. He contended that in the course of his employment, he was exposed to harmful (toxic) substances which resulted in him falling seriously ill and he was, as a consequence, medically boarded out. He alleges that the defendants had a duty to provide a safe work environment, which they failed to do. As a result, the plaintiff filed a claim in the High Court seeking the following reliefs: G

24. OLEH YANG DEMIKIAN tuntutan Plantif terhadap Defendan adalah seperti berikut: H

a) Pembayaran Gantirugi sebanyak RM20,000,000.00;

b) Gantirugi Am yang akan dinilai;

c) Gantirugi Punitif; I

d) Gantirugi Teruk (aggravated damages);

e) Faedah dengan kadar 5% setahun dari jumlah gantirugi yang dapat diawardkan kepada Plantif dari tarikh pemfailan Writ ini sehingga tarikh penyelesaian;

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f) Kos; dan

g) Sebarang Perintah dan/atau relif selanjutnya yang difikirkan adil dan suai manfaat oleh Mahkamah yang Mulia ini dalam keadaan kes ini.

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THE DEFENCE

[6] The defence was filed on 1 November 2022. Essentially, the defendants contended that the plaintiff was never an employee of D1 and that he had only worked for D2 and D3. The defendants denied any breach of duty of care and that in any event, the claim was time-barred under s 6(1) of the Limitation Act 1953. In the defence, the defendants also pleaded that the plaintiff was an 'insured person' as defined under the SOCSO Act and that he had been receiving invalidity pension. Significantly, s 31 of the SOCSO Act was not pleaded in the defence.

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D

THE APPLICATION TO STRIKE OUT

[7] The defendants filed the application to strike out the plaintiff's claim under O 18 r 19(1)(a) of the Rules of Court 2012 ('the striking out application') on the grounds that the plaintiff's claim disclosed no reasonable cause of action. The application reads as follows:

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(1) Bahawa Writ Saman dan Pernyataan Tuntutan yang kedua-duanya bertarikh 6.9.2022 yang difailkan terhadap Defendan-Defendan Pertama hingga Ketiga dibatalkan;

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(2) Bahawa kos bagi prosiding dalam perkara ini dan kos bagi permohonan ini hendaklah ditanggung dan dibayar oleh Plaintif; dan

(3) Sebarang relif lanjut dan/atau relif lain sebagaimana yang difikirkan suai manfaat dan wajar oleh Mahkamah yang Mulia ini.

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(4) Alasan-alasan ringkas yang menyokong permohonan ini adalah seperti berikut:

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5. Seksyen 31 Akta Keselamatan Sosial Pekerja 1969 (Akta PERKESO) antara lainnya, menyatakan bahawa seorang orang berinsurans ('an insured person') tidaklah berhak menerima atau mendapat daripada majikannya, atau daripada mana-mana orang lain yang merupakan pekhidmat majikan itu, apa-apa pampasan atau ganti rugi di bawah mana-mana undang-undang lain yang sedang berkuat kuasa berkenaan dengan bencana kerja yang berlaku padanya sewaktu menjadi seorang pekerja di bawah Akta PERKESO;

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6. Kecederaan yang didakwa telah dialami oleh Plaintif (yang tidak diakui), akan termasuk dalam kategori kecederaan pekerjaan yang dimaksudkan di bawah seksyen 31 Akta PERKESO, dan Plaintif sebagai seorang orang berinsurans di bawah Akta PERKESO akan

dihalang daripada memulakan tuntutannya dalam Writ Saman dan Pernyataan Tuntutan yang kedua-duanya bertarikh 6.9.2022, menurut seksyen 31 Akta PERKESO:

7. Writ Saman dan Pernyataan Tuntutan yang kedua-duanya bertarikh 6.9.2022 gagal mendedahkan kausa tindakan yang munasabah terhadap Defendan-Defendan Pertama hingga Ketiga;

8. Ia adalah jelas dan ternyata ('plain and obvious') daripada muka Writ Saman dan Pernyataan Tuntutan yang kedua-duanya bertarikh 6.9.2022 bahawa tuntutan dan/atau tindakan Plaintif terhadap Defendan-Defendan Pertama hingga Ketiga adalah tidak mampan ('unsustainable') dan oleh itu harus dibatalkan.

[8] On 15 May 2023, the learned High Court judge allowed encl 9 and ruled, inter alia, as follows:

(a) the plaintiff is not entitled to claim from the defendants under s 31 of the SOCSO Act;

(b) the plaintiff did not plead any particulars for the special damages claimed; and

(c) the plaintiff's claim is time-barred pursuant to s 6(1) of the Limitation Act 1953.

[9] The issues which have been summarised in paras (a) and (c) are self-evidently outside the ambit of the statement of claim. The issue of the claim being barred by limitation was pleaded in para 14 of the defence. Thus, the issue of limitation was clearly derived from the defence. From our reading of the defence, it is quite clear that there is no specific mention of the plaintiff's claim being barred under s 31 of the SOCSO Act. Section 31 of the SOCSO Act is only mentioned in the body of the striking out application (encl 9). At most the defence only described the plaintiff as an insured and had applied for and received invalidity pension. In this regard, it was pleaded at para 9.9 of the defence as follows: 'The Plaintiff is at all times an 'insured person' under the Employees' Social Security Act 1969 ('the SOCSO Act'). In fact, the plaintiff had submitted a claim for invalidity pension with the Social Security Organisation ('SOCSO') and SOCSO has paid out the said invalidity pension accordingly since 3 February 2017'.

[10] The defence raises various other issues which by any reckoning gives rise to dispute as to facts including as to whether the plaintiff was ever an employee of D1. In their reply to the defence, the plaintiff denies that the claim is barred by limitation. The plaintiff also reiterates that he was an employee of all the defendants.

[11] On behalf of the plaintiff, it was contended that the learned judge misdirected herself in examining the defence for purposes of determining whether the statement of claim disclosed a reasonable cause of action. It was argued for the plaintiff that the learned judge ought to have confined herself to the pleadings, ie the statement of claim and nothing more.

[12] But counsel for the defendants says otherwise. He said that although s 31 of the SOCSO Act was not in the statement of claim or even in the defence, it was permissible for the learned judge to have considered this issue which as a matter of law, totally barred the claim. As for the issue of limitation, counsel contended that this was raised in the defence and that it was legitimate for the judge to have taken it into consideration in dealing with whether encl 9 should succeed.

[13] Before us, counsel for the defendants argued that s 31 of the SOCSO Act need only be mentioned in the striking out application. He said that even if the averments in the statement of claim are correct, it only means plaintiff suffered an employment injury and that this was caused by the defendants.

[14] According to counsel for the defendants, the plaintiff cannot sue the defendants because of s 31 of the SOCSO Act is a complete bar. Counsel agreed that on the face of the statement of claim, there is a reasonable cause of action. But he went on to say that s 31of the SOCSO Act is not a defence and that as a matter of law, the claim is unsustainable. He said that s 31 of the SOCSO Act is 'clear' and that it need not be pleaded in the defence.

[15] Counsel went on to say that s 31 of the SOCSO Act is a bar as 'matter of law' which must be raised in the striking out application as the court is not permitted to look at the defence. It was thus argued for the defendants that as a matter of law, the plaintiff's claim is 'untenable' even if the plaintiff is able to prove everything as pleaded in the statement of claim. Counsel referred to the decision of the Court of Appeal in *Ramli bin Samad v Pacific & Orient Insurance Co Sdn Bhd* [2010] 3 MLJ 23; [2010] 1 CLJ 970 (CA) which ruled that in situation such as this, common law damages are not claimable. Thus, counsel said that based on *Ramli Samad*'s case, the plaintiff had 'no chance of success'. The following passages from *Ramli Samad*'s case were referred to:

> [20] Though admitting that s 31 of the SOCSO Act bars a claim against an employer and a co-employee, Mr Americk Sidhu however argued that this does not prohibit a claim by the appellant for common law damages. He explained that the SOCSO scheme set up by SOCSO Act involves collecting contributions from the employer for payment to an injured or disable workman based on the extent of his disability. However, under this scheme there is no award for pain and suffering and for loss of amenities. These common law damages were deprived from the injured worker and for this he submitted that:

> to correctly interpret the intended meaning of s 31 as anticipated by the legislature to mean that an injured employee should not be prevented from pursuing the recovery of compensation he or she is entitled to obtain from any other party, other than his employer, either directly or indirectly only because this would necessarily involved bringing an action against his or her employer or co-employer ...
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> The bringing of an action against the employer or a co-employer is a right that has never been taken away from an injured employee by statute. The only right that an injured employee has been deprived of is the right to receive or recover any compensation directly from his employer or co-employee.
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> [21] I find this argument unacceptable. Even if the appellant may succeed in claiming against the employer and co-employee for damages under common law, how is he going to receive or recover this in view of s 31 of the SOCSO Act 1992 [editor's note: SOCSO Act 1969 as amended by the Employees' Social Security (Amendment) Act 1992] which expressly says that the appellant as an insured person shall not be entitled to receive or recover from the employer and co-employee damages under any other law? And this prohibition, in my considered opinion, extends to the respondent as insurer by virtue of s 96(1) of the RTA for having issued a third party risks policy covering the employer and/or the co-employee — see *Ramli Shahdan & Anor v Motor Insurer's Bureau of West Malaysia & Anor* [2006] 2 MLJ 116; [2006] 1 CLJ 224 and *Rafiah bte Bakar v East-West UMI Insurance Bhd* [1993] 1 MLJ 39; [1993] 1 CLJ 431. This is only a natural extension since the liability of the insured has been taken over by the insurer. For this reason I find that the courts below had not erred in arriving at the conclusions they did.

[16] Counsel for the defendants also relied on the following decisions of the Federal Court relating to s 31 of the SOCSO Act:

(a) *Tan Peng Loh v Lee Aik Fong & Anor* [1982] 1 MLJ 74 (FC); and

(b) *Che Noh bin Yacob v Seng Hin Rubber (M) Sdn Bhd* [1982] 1 MLJ 80 (FC).

But it is important to emphasise that these are decisions after a full trial and are not decisions pursue to striking out applications.

[17] Hence, the question before us is whether the High Court should have only looked at the statement of claim to determine whether there was a reasonable cause of action, or whether it was permissible for the High Court to have looked at the issues raised in the defence, and also to consider s 31 of the SOCSO Act, albeit, not specifically mentioned in the defence. In this regard, counsel for the defendants agreed that under O 18 r 19(1)(a) of the Rules of Court 2012, the court shall only look at the statement of claim and nothing else.

[18] Thus, it is quite clear that the court may not look at matters raised in the defence. As stated earlier, counsel's position is that as a matter law (per s 31 of the SOCSO Act), the plaintiff's claim was untenable. And for the plaintiff, it was contended that the law pertaining to s 31of the SOCSO Act is not as clear cut as contended by the defendants. Counsel referred to the following passage from the Court of Appeal's decision in *Rajendiran a/l Manickam & Anor v Palmamide Sdn Bhd & Anor* [2020] MLJU 2565; [2020] 9 CLJ 510 (CA):

> [19] This argument of barring only claim for general and special damages but no bar against a claim for aggravated and exemplary damages for personal injuries sustained does not appear to have been argued and considered in the two Federal Court cases.
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> [20] The Court of Appeal in *Datuk Seri Khalid Abu Bakar & Ors v N Indra P Nallathamby & another appeal* [2015] 1 MLJ 353; [2014] 9 CLJ 15 explained when exemplary damages are awarded in a claim under the tort of negligence and breach of statutory duty as follows:
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> > [65] Exemplary damages are damages awarded for cases when the courts find the actions of the wrongdoers to be reprehensible and a conscious complete disregard of another's rights. It is not compensatory in nature but intends to reform or deter the defendant and others from engaging in conduct similar to that which formed the basis of the lawsuit. Lord Devlin in the often quoted case of *Rookes v Barnard* (1964) AC 1129 puts it this way:
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> > > There are certain categories of cases in which the award of exemplary damages can serve useful purpose in vindicating the strength of the law and thus affording a practical justification for admitting into civil law a principle which ought logically to belong to criminal.
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> [21] Aggravated damages would be awarded in a case where there is found aggravating conduct or circumstances in the negligent act committed which has resulted in the wrongdoer profiting at the expense of safety of its employees.
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> ...
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> [30] The current version of s 31 except for the proviso was amended by Act A814 which came into force on 1 July 1985.
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> [31] There was also then s 42 of the SOCSO Act which provides as follows:
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> > 42. When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law.
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> [32] By the Employees' Social Security (Amendment) Act 1997 (Act A981) which came into force on 1 May 1997, s 42 was later deleted. The same Amendment Act also introduced the proviso to the current s 31 with respect to the non-applicability of the prohibition to injuries sustained as a result of a motor vehicle accident where the employer or a servant of the employer is required to be insured against Third Party Risks under Part IV of the Road Transport Act 1987.

[33] The two Federal Court cases decided in 1982 were decided before the amendment that deleted s 42 in 1997.

[34] What then is the effect when s 42 of the SOCSO Act was deleted? The only written law with respect to compensation or damages with respect to employment injuries is the Workmen's Compensation Act 1952 which compensation is far inferior to what is claimable under the SOCSO Act and so is mainly used by foreign workers who are not covered under the SOCSO Act.

[35] The deletion cannot be to allow for a claim now under both the SOCSO Act as well as the Workmen's Compensation Act. At any rate for Malaysian workers, subsequent amendments to the SOCSO Act had allowed for a claim under the SOCSO Act even if one's employer has not so registered its employee under the SOCSO Act with the result that there was hardly a claim made by a Malaysian workman under the Workmen's Compensation Act 1952.

[36] There was also the provision of s 28A of the Civil Law Act 1956 which came into force on 30 May 1975 under an amendment introduced by the Civil Law (Amendment) Act 1975 Act A308 which provides as follows:

> 28A Damages in respect of personal injury
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> In assessing damages recoverable in respect of personal injury which does not result in death, there shall not be taken into account:
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> (a) any sum paid or payable in respect of the personal injury under any contract of assurance or insurance, whether made before or after the coming into force of this Act;
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> (b) any pension or gratuity, which has been or will or may be paid as a result of the personal injury; or
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> (c) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever in respect of the personal injury.

[37]'Employment injury' is of course a species and subset of 'personal injury' as defined in s 2(6) of the SOCSO Act and the written law in relation to the payment of any benefit or compensation would be by and large the SOCSO Act since the Workmen's Compensation Act 1952 has very limited utility.

[38] Whether or not Parliament had intended s 28A(1)(c) Civil Law Act 1956 (Act 67) to apply to an 'employment injury' is a matter which should be more fully argued at the trial in the sessions court where it may finally land up in the Court of Appeal, being the final Court of Appeal for a matter emanating in the sessions court.

[39] This would be a proper case where the trial judge should, as rightly decided by her, proceed with the trial as was done in *Abdul Rahim Mohamad v Kejuruteraan Besi Dan Pembinaan Zaman Kini* [1998] 4 MLJ 323; [1999] 5 CLJ 85, though the High Court there was of the view that the plaintiff was precluded from making his claim under common law as he was within the meaning of an 'insured person' under the SOCSO Act and as such his claim should be under SOCSO Act as the injury was an 'employment injury' even though the employer had not so registered the plaintiff with the SOCSO Board or made contribution under the Act.

A [40] The meaning of 'insured person' as modified by a subsequent amendment to the SOCSO Act was considered in *Liang Jee Keng v Yik Kee Restaurant Sdn Bhd* [2002] 2 MLJ 650; [2002] 2 CLJ 750 where it was held as follows:

> ... 'insured person' as defined under s 2(11) of the SOCSO Act. The present s 2(11) of the SOCSO Act defines:
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> > 'insured person' means a person who is or was an employee in respect of whom contributions are, were or could be payable under this Act, notwithstanding that such industry or employee was not so registered, so long as the industry was one to which this Act applies.
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> The present provision of s 31 was introduced into the SOCSO Act vide an amendment Act A675/87 which came into effect on 1 July 1987. Prior to that amendment, the previous provision of s 31 read:
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> > 'insured person' means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason
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> thereof, entitled to any benefits provided by this Act. Comparing the present and the previous definitions, it is obvious that the present definitions of an 'insured person' is much more wider than the previous one. It covers an employee in respect of whom contributions 'could be payable' under the Act.
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> It also covers employee who was not so registered under the SOCSO Act, so long as the relevant industry was one to which the SOCSO Act applies. In other words, even though the said employee was not registered with the SOCSO office at the time of the accident and no contributions are or were paid under the Act, the employee is still considered as an 'insured person' if the contributions 'could
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> be payable' under the Act, so long as the industry was one to which the SOCSO Act applies.
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> Our Decision
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> [41] The plaintiffs' claim may be weak but that is no justification for striking out in
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> limine when yet another attempt is made by testing the limits of the law where in a case of a social piece of legislation, any ambiguity has to be resolved in favour of the injured employee.
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> [42] We dare not say the plaintiffs' claims are completely hopeless and a total non-starter. This is certainly not a plain and obvious case where the plaintiffs' claim
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> should be struck out. A smoldering wick should not be snuffed out at this stage in as much as a bruised reed may yet blossom in the days ahead.
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> [43] We unanimously agreed that the matter should be sent back to the sessions court for trial and that the order of the High Court striking out the plaintiffs' claim be set aside with costs in the cause.

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[19] At any rate, as we said at the outset, the issue is ultimately a procedural one, that is whether in a striking out under O 18 r 19(1)(a) of the Rules of Court 2012, the court may look outside the four corners of the statement of claim, and consider any statutory provisions which may bar the claim. The first

point that we wish to make is that counsel for the defendants has admitted (quite rightly) that the court cannot look beyond the statement of claim. Thus, matters raised in the defence may not be taken into account when the court is called upon to decide whether the statement of claim disclosed a reasonable cause of action. Hence, it follows that the issue of limitation under s 6(1) of the Limitation Act 1953 should not have been considered by the learned judge. The point in this regard is underscored by majority decision of the English Court of Appeal (Lord Denning — dissenting) in *Drummond-Jackson v British Medical Association* [1970] 1 All ER 1094; [1970] 1 WLR 688; 114 Sol Jo 152 (CA) which is highly instructive on the procedural issue of what may and what may not be considered for purposes of a striking out application on the basis that there was no reasonable cause of action. In that case, Lord Justice Pearson distilled the principles and stated them as follows:

(a) 'the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases';

(b) 'the order for striking out should only be made if it becomes plain and obvious that the claim or defence cannot succeed';

(c) in my opinion the traditional and hitherto accepted view — that the power should only be used in plain and obvious cases — is correct according to the evident intention of the rule for several reasons. First, there is in r 19(1)(a) the expression 'reasonable cause of action', to which Sir Nathaniel Lindley MR called attention in *Hubbuck & Sons Ltd v Wilkinson, Heywood and Clark Ltd* [1899] 1 QB 86 at pp 90–91; [1895–99] All ER Rep 244 at p 247. No exact paraphrase can be given, but I think 'reasonable cause of action' means a cause of action with some chance of success, when (as required by r 19(2)) only the allegations in the pleading are considered;

(d) if when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out. In *Nagle v Feilden* [1966] 1 All ER 689 at 685; [1966] 2 QB 633 at 648) Danckwerts LJ said:

> The summary remedy which has been applied to this action is one which is *only to be applied in plain and obvious cases, when the action is one which cannot succeed or is in some way an abuse of the process of the court*.

Salmon LJ said [1966] 1 All ER 689 at p 697; [1966] 2 QB 633 at p 651:

> It is well settled that a *statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable*.

(e) thirdly, *an application for the statement of claim to be struck out under this rule is made at a very early stage of the action when there is only the statement of claim without any other pleadings and without any evidence at all. The*

plaintiff should not be 'driven from the judgment seat' at this very early stage unless it is quite plain that his alleged cause of action has no chance of success; and

(f) *that is the basis of rule and practice on which one has to approach the question whether the plaintiff's statement of claim in the present case discloses any reasonable cause of action. It is not permissible to anticipate the defence or defences — possibly some very strong ones —which the defendants may plead and be able to prove at the trial*, nor anything which the plaintiff may plead in reply and seek to rely on at the trial. *Does this statement of claim disclose an alleged cause of action which has some chance of success*?

[20] The approach taken in Malaysia is similar. Indeed, *Drummond-Jackson v British Medical Council* was applied by the then Federal Court in *New Straits Times (Malaysia) Bhd v Kumpulan Kertas Niaga Sdn Bhd & Anor* [1985] 1 MLJ 226 (FC) where Mohamed Azmi FCJ said (pp 227–228) that '… the *court must consider only the pleadings* for the purpose of determining whether the statement of claim disclosed no reasonable cause of action or the statement of defence disclosed no defence. The test to be applied is 'whether *on the face of the pleadings*, the court is prepared to say that *the cause of action* or the defence *is obviously unsustainable* …'.

[21] Thus, upon applying the well-established principles referred to above, it is clear that the learned judge in the present case had misdirected herself in considering matters outside the statement of claim, ie matters referred to in the defence (limitation per s 6 of the Limitation Act 1953) and s 31 SOCSO Act which was not even specifically pleaded in the defence, but only mentioned in the body of encl 9 as one of the grounds for striking out the statement of claim. All that was said in the defence was that the plaintiff had applied for and was receiving invalidity pension.

[22] We do not agree with the submissions that were made on behalf of the defendants that s 31 of the SOCSO Act need not be pleaded. In our view, s 31 of the SOCSO Act must be pleaded. In this regard, we agree with the decision of Wong Khian Keong J (now JCA) in *Rexallent Construction Sdn Bhd v MSIG Insurance (Malaysia) Bhd and other cases* [2022] MLJU 1736; [2022] CLJU 1736; [2022] 1 LNS 1736 (HC) where he said relevantly:

> [36] I accept the submission by Ms Esther Geetha that *Rexallent and Safetags cannot rely on s 31 SOCSO to support Rexallent's Appeal (Cheng Voon) and Safetags' Appeal (Cheng Voon). This is because the defences of Rexallent and Safetags filed in this suit had not pleaded such a defence as required by O 18 rr 8(1)(a), (b) and 12(1) of the RC*. I reproduce below the relevant parts of O 18 rr 8(1)(a), (b) and 12(1) of the RC:
>
> O 18 r 8 Matters which shall be specifically pleaded
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> (1) A party shall in any pleading subsequent to a statement of claim plead

specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality — A

(a) which he alleges makes any claim or defence of the opposite party not maintainable;

(b) which, if not specifically pleaded, might take the opposite party by surprise; ... B

O 18 r 12 Particulars of pleading

(1) Subject to paragraph (2), every pleading shall contain the necessary particulars of any claim, defence ... (Emphasis added.) C

At all material times, Rexallent and Safetags were legally represented at the trial. Yet, Rexallent and Safetags did not apply to amend their defences so as to include their reliance on s 31 of the SOCSO. It is trite law that a party is bound by the party's pleading. I cite the following judgment of Azahar Mohamed FCJ (as he then was) in the Federal Court case of *Saiman bin Umar v Lembaga Pertubuhan Peladang & another appeal* [2015] 6 MLJ 492; [2015] 9 CLJ 153 at [40] and [41]: D

[40] In our view, there is merit in the submissions of learned counsel for the defendant. It is a well-settled legal principle that the court should not decide on an issue that was not pleaded by the parties as had been decided in *Yew Wan Leong v Lai Kok Chye where the Supreme Court cited Janagi v Ong Boon Kiat* [1971] 2 MLJ 196; [1971] CLJU 42; [1971] 1 LNS 42 and agreed with the following passage of Sharma J which stated: E

The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties, it is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. F

In disposing of a suit or matter involving a disputed question of fact it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of a suit should be confined to the pleas on which the parties are at variance. G

[41] We should remind ourselves that parties to an action are bound by their own pleadings. It is therefore necessary to make the point that the court is also bound by the pleadings in as much as the parties themselves ... (Emphasis added.)

Cheng Voon, Rexallent and Safetags had adduced oral and documentary evidence at the trial. SC's judgment had already been delivered. *It is now too late in the day for Rexallent and Safetags to invoke s 31 of the SOCSO in Rexallent's Appeal (Cheng Voon) and Safetags' Appeal (Cheng Voon).* H

[23] Thus, we take the view that the learned judge should have confined herself to the statement of claim, and asked herself whether on the face of the pleaded case, the cause of action was obviously unsustainable and which warranted the statement of claim to be struck out. In our view, the learned judge ought not to have considered the issue of limitation, and s 31 of the I

SOCSO Act, as these are plainly and patently matters which are not found in the statement of claim.

[24] Thus, if the learned judge had confined herself to just the contents of the statement of claim, it would have been obvious that there was a reasonable cause of action which had been disclosed. Indeed, counsel for the defendants had even conceded that if we do not look beyond the statement of claim, then there is a reasonable cause of action. But we accept of course that the defendants may have a very compelling defence by way of s 6(1) of the Limitation Act 1953. In this regard, we are mindful that the plaintiff has maintained per the reply to defence that his claim is not time-barred. But, whether the plaintiff's claim is time-barred or not, remains to be seen.

[25] As for the defence of statutory bar under s 31 of the SOCSO Act, we think that this can only be raised by way of an amendment to the defence dated 1 November 2022. What the defendants ought to have done was to include s 31 of the SOCSO Act in the defence (by way of an amendment) and then apply to strike out the statement of claim under O 18 r 19(1)(b), (c) or (d) of the Rules of Court 2012.

[26] As for the High Court's decision to strike out the claim because special damages were not particularised, we think that this is a non-starter as it is quite clear that the statement of claim (on the whole) suffers from poor drafting and the sum of RM20m looks more like a claim for quantified general damages which is contrary to O 18 r 12(1A) of the Rules of Court 2012. Even if it is a special damage claim, the defendants can take the requisite objection at the appropriate time if the plaintiff is so minded to pursuing a purported unparticularised special damage claim for RM20m.

[27] The question at the end of the day is whether the statement of claim disclosed a reasonable cause of action? In this regard, we have confined ourselves only to the statement of claim (and disregarding the issues raised in the defence or in encl 9), and upon our examination of the contents of the statement of claim (despite the inelegant drafting), it cannot be said that there is no reasonable cause of action for breach of duty of care owed by the defendants to the plaintiff who claims that he was (allegedly) an employee of the defendants and that due to their alleged breach of employers' duty of care, he has sustained severe medical injuries and thereby suffered damages.

[28] As such, based solely on the procedural issue, we find merit in this appeal. The appeal is allowed. The High Court's decision dated 15 May 2023 is set aside. Consequently, encl 9 is dismissed. We order the defendants (respondents in the appeal) to pay costs of RM15,000 as costs here and below (subject to allocator) to the plaintiff (appellant). The security for costs of

RM10,000 plus interest (if any) is to be refunded to Messrs M Manoharan & Co within two weeks from today.

[29] We direct the case to be restored to the High Court list and it is to be called up for case management before another judicial commissioner/judge on 30 May 2025 (9am).

Appeal allowed; High Court's decision set aside; and striking out application dismissed.

Reported by Ashok Kumar